

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS INC,
Plaintiff,

v.

ARISTA NETWORKS, INC.,
Defendant.

Case No. 14-cv-05344-BLF

**OMNIBUS ORDER RE PRETRIAL
SEALING MOTIONS**

[Re: ECF 612, 616, 617, 631, 632, 641, 652,
660, 662]

This order addresses administrative motions to file under seal portions of its briefing and exhibits filed by Arista Networks, Inc. (“Arista”) and Cisco Systems Inc. (“Cisco”) in support of their trial briefs. ECF 612, 616, 617, 631, 632, 641, 652. It also addresses the motions to file under seal portions of the Court’s Order re motions *in limine* and a pretrial conference transcript. ECF 660, 662. For the reasons stated below, the motions are GRANTED IN PART and DENIED IN PART.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are “more than tangentially related to the merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at 1097. In addition, sealing motions filed in this district must be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b).

A party moving to seal a document in whole or in part must file a declaration establishing that the identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A). “Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.” *Id.*

II. DISCUSSION

The Court has reviewed the parties’ sealing motions and declarations in support thereof. The Court finds the parties have articulated compelling reasons to seal certain portions of most of the submitted documents. The proposed redactions are also narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables below:

A. ECF 612

Identification of Documents to be Sealed	Description of Documents	Court’s Order
Exhibit 9 to the Declaration of Ryan Wong In Support of Defendant Arista Networks, Inc.’s Opening Brief re Analytic Dissection (“Wong Declaration”) (Cisco Interrogatory Responses, Exhibit G)	The entire document contains information relating to highly confidential source code of Cisco and Arista.	GRANTED.
Exhibit 10 to the Wong Declaration (Cisco Interrogatory Responses, Exhibit H)	The entire document contains information relating to highly confidential source code of Cisco and Arista.	GRANTED.
Exhibit 11 to the Wong Declaration (Compilation of Deposition Transcript Excerpts)	Pages 9:21-23 of the Li excerpt; and pages 8:11-19 of the Liu excerpt are previously filed under seal per the Court’s August 24, 2016 order (ECF 487) at 24. The excerpts contain Cisco’s confidential business information pertaining to its source code.	GRANTED.
Exhibit 13 to the Wong Declaration (Cisco document)	Entire document contains Cisco’s confidential business information regarding Cisco’s product design. Previously filed under seal per the Court’s August 24, 2016 order (ECF 487) at 21.	GRANTED.

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1	Exhibit 14 to the Wong Declaration (Cisco document)	Entire document contains Cisco's confidential business information regarding Cisco's product design. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 21.	GRANTED.
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5	Exhibit 15 to the Wong Declaration (Li Deposition Excerpts)	Pages 9:21-23; 152:8-20; 227:19-22; 236:22-24 contain personal information about the witness and confidential information about Cisco's product development. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 18.	GRANTED.
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10	Exhibit 16 to the Wong Declaration (March 31, 2016 Remaker Deposition Excerpts)	Pages 27:1-29:25; 38:2-45:25; 50:2-57:25; 62:1-73:24; 82:1-85:19 contain confidential information about Cisco's product development. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 19.	GRANTED.
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15	Exhibit 17 to the Wong Declaration	Entire document contains Cisco's confidential business information regarding Cisco's product development. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 20-21.	GRANTED.
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19	Exhibit 18 to the Wong Declaration (Sweeney Deposition Excerpts)	Entire document discusses and discloses internal, non-public information regarding the development and development process of the Arista EOS software, including details regarding how certain technologies were integrated into Arista's products. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 21.	GRANTED.
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26	Exhibit 20 to the Wong Declaration (Black Opening Expert Report)	Portions previously ordered filed under seal: Paragraphs ¶¶ 298, 397, 519, 525, and 678(i); portions quoting or referencing	GRANTED.
27			
28			

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	deposition of Philip Kasten; highlighted portions of Paragraphs ¶¶ 120, 123-125, 132, 161, 433, 438, 448-459, 461-471, 478-482, 498, 500-502, 504, 508, 510, 514, 515, 570, 580, 636, 689-691, 696, 700 and footnotes 32, 35, 40, and 128 contain Cisco's and Arista's confidential business information.	
	Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 14, and August 26, 2016 order (ECF 490) at 2.	
Exhibit 22 to the Wong Declaration (Black Rebuttal Expert Report)	Paragraphs ¶¶ 148, 155, 156, 160-166, and 169-171; and 50-51, 55, 148, 155, 156, 159, 160, 165, and 170 contain Cisco's and Arista's confidential information.	GRANTED.
	Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 22.	
Exhibit 30 to the Wong Declaration (April 4, 2016 Loughheed Deposition Excerpts)	Pages 259:15-260:22; 261:18-22; 267:4-295:1; 296:23-298:16, 346:18-374:18; 379:2-25 contain confidential information regarding Cisco's source code and product development.	GRANTED.
	Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 19-20.	
Exhibit 32 to the Wong Declaration (Kasten (Juniper) Deposition Excerpts)	Entire document contains confidential information and trade secret information of non-party, Juniper Networks, Inc. regarding its proprietary software.	GRANTED.
	Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at 2.	
Exhibit 33 to the Wong	Pages 50:6; 54:12 contain	GRANTED.

1	Declaration (Dell Corporation Representative Deposition Excerpts)	identity of the customer of Mr. Cato's previous employer, which constitutes confidential business information.	
2			
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4		Previously filed under seal per the Court's August 26, 2016 order (ECF 490) at 2.	
5	Exhibit 36 to the Wong Declaration (Liu Deposition Excerpts)	Pages 167-172 contain Cisco's confidential business information about Cisco's product development.	GRANTED.
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8		Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at page 3.	
9			
10	Exhibit 38 to the Wong Declaration (Black Supplemental Report)	Paragraphs 13, 23, 35, 59, 76, 78, 80, 84, 85, 98, 99, 100 and footnote 11 contain confidential source code, discussions of related confidential third-party source code, as well as confidential information about Cisco's licenses, business development, and competitive intelligence.	GRANTED.
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17		Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at 2.	
18			
19	Exhibit 39 to the Wong Declaration (September 16, 2016 Loughheed Deposition Excerpts)	Pages 506, 583-584, 587-588, and 626 contain confidential information about Cisco's source code and product development.	GRANTED.
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21			
22		Previously filed under seal per the Court's October 27, 2016 order (ECF 604) at 3.	
23			
24	Exhibit 42 to the Wong Declaration (November 20, 2016 Loughheed Deposition Excerpts)	Pages 55:2-56:18, 95:9-99:14; 178:11-13 contain confidential information about Cisco's source code and product development.	GRANTED.
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27		Previously filed under seal per the Court's August 24, 2016	
28			

	order (ECF 487) at 18.	
Exhibit 44 to the Wong Declaration (March 30, 2016 Remaker Deposition Excerpts)	<p>Page 8:17-18 contains personal information related to the witness.</p> <p>Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 22.</p>	GRANTED.
Exhibit 45 to the Wong Declaration (Patil Email)	<p>Entire document contains confidential business information regarding Cisco's product development.</p> <p>Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 20.</p>	GRANTED.

B. ECF 616

Identification of Documents to be Sealed	Description of Documents	Court's Order
Cisco's Trial Brief Re: Analytic Dissection	Arista does not seek to seal the highlighted portions.	DENIED.
Exhibit A to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (copy of his Opening report dated June 3, 2016)	<p>The highlighted portions contain Cisco's and Arista's confidential business information including information regarding product architecture, development, support and documentation; customer communications, sales, sales strategies, and testing and analysis procedures.</p> <p>The Court has previously granted the sealing of the highlighted portions of this document. ECF 487 at 5-10.</p>	GRANTED.
Exhibit C to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (Evidence of Command Copying Table)	Highlighted portions contain Arista's source code and the development timeline of Arista's products.	GRANTED.

1	Exhibit F to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (Evidence of Hierarchy Copying Table)	Highlighted portions contain Arista's source code and the development of Arista's products.	GRANTED.
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3			
4	Exhibit G to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (Interrogatory 2, Evidence of Help Description Copying)	Entire document contains Cisco's and Arista's confidential business information regarding source code.	GRANTED.
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8	Exhibit H to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (copy of Kevin Almeroth's Rebuttal report dated June 17, 2016)	Highlighted portions of contain Cisco and Arista's confidential business information. The Court has previously granted the sealing of the highlighted portions of this document. ECF 487 at 10-13.	GRANTED.
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13	Exhibit 1 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection (excerpt of Opening Expert Report of Dr. John Black)	Highlighted portions contain discussions of Cisco's confidential source code and discussions of related confidential third-party source code. The Court has previously granted the sealing of the highlighted portions of this document. ECF 487 at 14-15.	GRANTED.
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19	Exhibit 2 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection (copy of Cisco's Supplemental Exhibit F to Cisco's Supplemental Responses to Interrogatory Nos. 16 & 19)	Highlighted portions contain Cisco's confidential source code. The Court has previously granted a motion to seal these portions.	GRANTED.
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25	Exhibit 4 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection (First Supplemental Exhibit I to Interrogatory No. 31 (Oct. 14,	Arista does not seek to seal this exhibit.	DENIED.
26			
27			
28			

1	2016))		
2	Exhibit 11 to the	Pages 174:3-175:3; 176:7-25;	GRANTED as to pages 174:3-
3	Declaration of Drew	and 216:1-219:25 contain	175:3; 176:7-25; and 216:1-
4	Holmes in Support of	Arista's confidential business	219:25; and DENIED as to
5	Cisco's Trial Brief Re:	information and product	remainder.
6	Analytic Dissection (Excerpts	development.	
7	of Deposition Transcript of		
8	Adam Sweeney)		
9	Exhibit 13 to the	Cisco's declaration states that	DENIED.
10	Declaration of Drew	the "highlighted portions"	
11	Holmes in Support of	contain confidential	
12	Cisco's Trial Brief Re:	information about Cisco's	
13	Analytic Dissect (Excerpt from	product development. Jenkins	
14	the deposition of Phillip	Decl. ¶ 10, ECF 616-1.	
15	Remaker)	However, the motion seeks to	
16		seal the entire exhibit and no	
17		document with partial	
18		redaction or highlighted	
19		portions has been provided.	
20	Exhibit 16 to the	The following portions of this	GRANTED as to the table
21	Declaration of Drew	document contain Arista's	starting on page 8, line 13, and
22	Holmes in Support of	confidential information	ending on page 9, line 28; the
23	Cisco's Trial Brief Re:	relating to product design and	table starting on page 10, line
24	Analytic Dissection (Arista's	development:	6, and ending on page 12, line
25	supplemental discovery	<ul style="list-style-type: none"> • The table starting on page 	3; the table starting on page 12,
26	responses to Cisco's	8, line 13, and ending on	line 13, and ending on page 16,
27	Interrogatory No. 9.)	Page 9, line 28;	line 11; the table starting on
28		<ul style="list-style-type: none"> • The table starting on page 	page 16, line 20, and ending on
		10, line 6, and ending on	page 23, line 15; the
		Page 12, line 3;	information on page 23, lines
		<ul style="list-style-type: none"> • The table starting on page 	16 through 27; and DENIED
		12, line 13, and ending on	as to remainder.
		Page 16, line 11;	
		<ul style="list-style-type: none"> • The table starting on page 	
		16, line 20, and ending on	
		Page 23, line 15;	
		<ul style="list-style-type: none"> • The information on page 	
		23, lines 16 through 27.	
	Exhibit 17 to the	The table starting on page 7,	GRANTED as to the table
	Declaration of Drew	line 11, and ending on page 18,	starting at 7:11, and ending at
	Holmes in Support of	line 13 contains Arista's	18:13; and DENIED as to
	Cisco's Trial Brief Re:	confidential business	remainder.
	Analytic Dissection (Arista's	information regarding internal	
	supplemental discovery	product design and	
	responses to Cisco's	development.	
	Interrogatory No. 26.)		

C. ECF 617

Identification of Documents to be Sealed	Description of Documents	Court's Order
Arista's Opening Brief re Analytic Dissection	Third-party Juniper Networks seeks to seal highlighted portions of the footnote on page 12, except for the last line of the footnote, and the highlighted portions at 19:20-23. These portions contain confidential information relating to Juniper's software. No other parties seek to seal the remaining portions.	GRANTED as to highlighted portions of the footnote on page 12, except for the last line of the footnote, and the highlighted portions at 19:20-23; and DENIED as to remainder.

D. ECF 631

Identification of Documents to be Sealed	Description of Documents	Court's Order
Cisco's Trial Brief re: Copyrighted Work	The highlighted portion at 2:7-9 contains confidential information regarding Arista's product development.	GRANTED as to the highlighted portion of 2:7-9; and DENIED as to remainder.

E. ECF 632

Identification of Documents to be Sealed	Description of Documents	Court's Order
Exhibit 1 to the Declaration of Audrey Hadlock ISO Arista's Brief Re Defining Cisco's Copyrighted Works (Cisco Interrogatory Responses)	Cisco has not filed a declaration in support of sealing this exhibit.	DENIED.

F. ECF 641

Identification of Documents to be Sealed	Description of Documents	Court's Order
Cisco's Trial Brief	Arista has not filed a declaration in support of sealing the highlighted portions of this exhibit.	DENIED.

G. ECF 652

Identification of Documents to be Sealed	Description of Documents	Court's Order
Cisco's Response to Arista's Brief re: Analytic Dissection	Portions at 2:20-3:5 and 11:19-28 contain confidential information relating to design and development of Arista software and product	GRANTED as to pages 2:20-3:5 and 11:19-28; and DENIED as to remainder.

	development strategies.	
Exhibit 1 to the Declaration of John M. Neukom (November 20, 2015 excerpt of deposition transcript of Kirk Loughheed)	Although Cisco submitted a declaration in support of sealing portions of the exhibit containing information relating to Cisco's product development and architecture, the portions designated to be sealed in the motion do not correspond to the highlighted portions in the unredacted exhibit. Accordingly, the Court cannot assess what portions are sought to be redacted and whether they are narrowly tailored.	DENIED. <i>Compare</i> ECF 652 (designating portions at 131:1-135:25; 141:1-143:25; 166:1-169:25 to be sealed) <i>with</i> ECF 652-5; <i>see also</i> Civil L.R. 79-5(d)(1).
Exhibit 2 to the Declaration of John M. Neukom (March 17, 2016 excerpt of the deposition transcript of the Anshul Sadana)	Arista does not seek to seal this exhibit.	DENIED.

H. ECF 660

Identification of Documents to be Sealed	Description of Documents	Court's Order
Court's Order re Motions in Limine	Portions at 7:15, 7:28, 8:2, and 12:19-21, starting with "Arista's Senior Vice President" and ending with "publicly," contain Arista's confidential business information.	GRANTED.

I. ECF 662

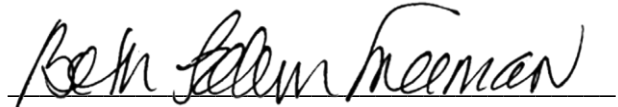
Identification of Documents to be Sealed	Description of Documents	Court's Order
November 3, 2016 Pretrial Conference Transcript	Highlighted portions at 59:22-25; 60:1-2; 62:12-16; 65:11-17; 66:2-4, 8-17; 93:19-20, and 93:23 contain confidential information relating to the International Trade Commission's determination that is under seal.	GRANTED.

III. ORDER

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART the aforementioned sealing motions. Under Civil Local Rule 79-5(e)(2), for any request that has been denied because the party designating a document as confidential or subject to a protective order has not provided sufficient reasons to seal, the submitting party must file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and no later than 10 days from the filing of this order. With respect to the motions at ECF 660 and 662, Arista is ordered to file redacted versions of the Court's Order re motions *in limine* and of the pretrial conference transcript within 10 days from the filing of this order.

IT IS SO ORDERED.

Dated: November 29, 2016


BETH LABSON FREEMAN
United States District Judge